

Rule 16.2 FINAL PRETRIAL CONFERENCE

(a) *Final Pretrial Conference.* A final pretrial conference shall be held when ordered by the Court. Counsel who will try the case shall attend, unless excused by the Court, shall submit a pretrial conference memorandum, as herein required, and shall be prepared on all of the items covered by the pretrial notice and check list approved by the Circuit Committee on Pretrial of the Judicial Conference of the Tenth Circuit. (See Appendix A). The pretrial order shall be prepared by the Court or the Magistrate Judge, except when otherwise directed by the Court (in a form similar to Appendix B).

(b) *Final Pretrial Conference Preparation.* Five (5) days prior to the date fixed for the final pretrial conference, counsel for the parties herein shall:

(1) submit to the Court, with a copy to the opposing counsel, a pretrial conference memorandum containing a brief statement of the issues, legal theories and positions of the parties; a list of the names and addresses of the witnesses whom the parties intend to call to testify at the trial, together with a complete and specific statement of the testimony intended to be elicited from each witness in the trial; a list of all the exhibits which that party proposes to use in the trial of the case and further reporting on all other matters referred to in the approved form of pretrial order. **(See Appendices A and B)** If depositions have been taken of a witness listed, counsel may refer to the deposition rather than to repeat a summary of that witness's testimony.

(2) be prepared to specify which of the listed witnesses *may* be called, and which of such witness *will* definitely be present for the trial. The opposing party shall not be required to subpoena witnesses who will be produced by an opponent.

(3) list and mark each exhibit intended to be offered at the pretrial conference. Counsel for the plaintiff(s) shall list and mark each exhibit with numerals and the number of the case, and counsel for the defendant(s) shall list and mark each exhibit intended to be offered at the pretrial conference with letters and the number of the case, e.g., Civil No. _____, Plaintiff's Exhibit 1; Civil No. _____, Defendant's Exhibit A. In the event there are multiple parties, plaintiff or defendant, the surname or abbreviated names of the parties shall precede the word "Exhibit," e.g., Defendant Jones Exhibit A, Defendant Smith Exhibit A, etc. In cases where defendant's exhibits are numerous, the defendant may use a combination of letters and numerals to designate such exhibits. Although exhibits are marked

and numbered at a pretrial conference, they shall again be offered in the course of the trial.

If such exhibits have been shown to opposing counsel prior to the pretrial conference and no objection will be made thereto, it shall not be necessary to exhibit such documentary evidence at the pretrial conference.

Absent good cause shown, no exhibit shall be received in evidence at the trial which was not marked and exhibited as required herein, nor shall any witness be permitted to testify unless his name and address appear on the witness list, together with a complete and specific statement of all of his testimony, as required by *Smith v. Ford Motor Company*, 626 F.2d. 784 (10th Cir. 1980).

(4) notify the court reporter immediately upon receipt of the notice setting the conference, if counsel wish to have the pretrial conference reported. If no such request is received, it will be understood that the parties agree that the pretrial conference will be conducted without the presence of the court reporter.

In all cases to be tried before a jury, the Court, in consultation with counsel during the final pretrial conference, will determine the number of jurors to be empaneled and the number of peremptory challenges the Court will allow. The Court will set forth its determination in its final pretrial order.

(c) *Telephone Conference Calls.* Out of town counsel may participate in any pretrial conference by telephone conference call, but shall first notify the Court, and shall deliver to the Court and opposing counsel any documents required to be presented at such conference, e.g., the pretrial conference memorandum, photocopies of exhibits, briefs, instructions, etc. It is the responsibility of the attorneys to coordinate with one another and arrange for a telephone conference call to the Court and to place the call at the time set for hearing. (See Local Rule No. 83.5)